

N5uW245C

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 245 PARK MEMBER LLC,

4 Petitioner,

5 v.

22 Civ. 5136 (JGK)

6 HNA GROUP (INTERNATIONAL)
7 COMPANY LIMITED,

8 Respondent.

Telephone Conference

-----x

9 New York, N.Y.

10 May 30, 2023

2:00 p.m.

11 Before:

12 HON. JOHN G. KOELTL,

13 District Judge

14 APPEARANCES

15 KASOWITZ BENSON TORRES LLP
Attorneys for Petitioner

16 BY: MARK P. RESSLER
17 PAUL M. O'CONNOR III
HENRY B. BROWNSTEIN

18 KOBRE & KIM LLP
Attorneys for Respondent

19 BY: JEREMY O. BRESSMAN
20 GEOFFREY J. DERRICK

N5uW245C

(Case called)

THE COURT: Who is on the phone for the petitioner?

MR. RESSLER: Good afternoon, your Honor. It's Mark Ressler from Kasowitz Benson Torres on behalf of petitioner 245 Park Avenue. I'm joined by my colleagues Paul O'Connor and Henry Brownstein.

THE COURT: OK.

Who is on the line for the respondent?

MR. BRESSMAN: Good afternoon, your Honor. You have Jeremy Bressman from the law firm of Kobre & Kim on behalf of respondent HNA Group International Company Limited, and I'm here with my colleague Geoffrey Derrick.

THE COURT: OK.

I have the respondent's letter dated May 30, 2023, that looks for a stay. The petitioner hasn't had an opportunity to respond, but before I listen to the parties, I have an initial question for the respondent.

The respondent waited 11 days after May 19 to ask for a stay for an event that's supposed to occur tomorrow and says this is now urgent. Why the delay of 11 days looking for the stay to write a two-page letter?

MR. BRESSMAN: Hi, your Honor.

Yes, we appreciate that there was some delay here. Our client was assessing its options in light of the Court's

N5uW245C

1 order and whether it wanted to seek an appeal, which it decided
2 to do. Then once we had authority from our client to seek an
3 appeal of the Court's order, we promptly moved for a stay.

4 THE COURT: Have you filed a notice of appeal?

5 MR. BRESSMAN: Yes, we filed that this morning, your
6 Honor.

7 THE COURT: This morning. OK.

8 What would the petitioner like to tell me?

9 MR. RESSLER: Judge, do you want to start with the
10 petitioner? I mean our view is that --

11 THE COURT: I have the respondent's letter, which sets
12 out why I should issue a stay. Normally, I would give the
13 petitioner the opportunity to respond to the application, but
14 since this is something that's supposed to occur tomorrow, that
15 doesn't give the petitioner much time to submit responsive
16 papers. So I thought I would simply set it down for a
17 conference to give you the opportunity to respond.

18 MR. RESSLER: Well, I appreciate that, your Honor.

19 No. 1, as your Honor noted, the fact that respondent
20 waited 11 days to ask for a stay, literally on the eve of the
21 Court's deadline, refutes any suggestion that there's any kind
22 of emergency here or exigency. So that's No. 1.

23 No. 2, there's no irreparable injury that's
24 confronting respondent in the absence of a stay. At most,
25 respondent would have its judgment reduced arguably by \$40

N5uW245C

1 million, you know, facts we've already discussed with respect
2 to the Rule 60 motion. To the contrary, the only irreparable
3 harm here if your Honor issues a stay is that which will hurt
4 petitioner.

5 We have been trying since last July, when your Honor
6 confirmed \$185 million arbitration award, to shake money out of
7 this respondent, and we've come up empty because respondent has
8 continually pursued a campaign of evasion and obstruction,
9 thwarting every effort we've made to obtain satisfaction of
10 this judgment. And there's no reason to stay your Honor's May
11 19 order. There's no likelihood of success here on the merits.
12 Your Honor applied a crystal clear line of New York cases, the
13 79 *Madison* case, exactly as it's supposed to be applied, and to
14 be sure, there was nothing in respondent's opposition brief nor
15 in its letter from today that would suggest in any way the
16 Second Circuit would be likely to reverse your Honor's
17 well-reasoned ruling, which, as I noted, simply applies a New
18 York State law.

19 Finally, Judge, with respect to public policy, which
20 is also a consideration for the Court on the question of a
21 stay, New York favors enforcing New York judgments against
22 judgment debtors. And here, as your Honor noted in the May 19
23 opinion and order, this respondent has pursued all manner of
24 efforts to frustrate and obstruct the judgment creditor's
25 attempt to satisfy the judgment.

N5uW245C

1 So for all of those reasons, we urge your Honor not to
2 grant the request for a stay, to have petitioner proceed with
3 the turnover, which must be accomplished by tomorrow. This is
4 an eleventh hour Hail Mary attempt once again to frustrate our
5 efforts to hold a judgment debtor to account.

6 THE COURT: OK.

7 Anything you'd like to say in response, Mr. Bressman?

8 MR. BRESSMAN: Yes, your Honor. Thank you.

9 A few things. First, I'd like to note our client
10 intends to comply with the court order effecting a stay. HNA
11 continues to reject the position that our client had been
12 thwarting or obstructing the judgment. We made a motion.
13 Obviously, that simply did not come out in our client's favor,
14 but we intend to comply, and we're simply seeking a stay in
15 order to preserve the status quo in the case of a successful
16 appeal.

17 As we noted in our papers, HNA International will
18 suffer irreparable injuries after Tuesday because the assets
19 simply won't be there if the appellate court comes out the
20 other way. I should also note that --

21 THE COURT: Why isn't that compensable in money
22 damages?

23 MR. BRESSMAN: That could be compensable, your Honor.
24 I don't --

25 THE COURT: So that's not irreparable injury then.

N5uW245C

1 MR. BRESSMAN: Well, your Honor, the assets being
2 turned over, which is the membership interest in a Delaware
3 LLC, which holds other Delaware LLCs, the assets hold a number
4 of underlying companies that have employees, that have business
5 relationships.

6 THE COURT: There's been no showing of what the assets
7 of that LLC are, and the value of the LLC should be
8 compensable, should be valuable, could be valued. And that
9 would be compensable as money damages, wouldn't it?

10 MR. BRESSMAN: There may be, your Honor.

11 THE COURT: OK.

12 MR. BRESSMAN: Let me move on to another point of
13 view, which is that we think that there's a substantial
14 possibility that HNA International will succeed on appeal. As
15 we noted, we intend to ask the Second Circuit to certify to the
16 New York Court of Appeals the questions of whether New York law
17 permits the turnover of a Delaware LLC.

18 Petitioner's counsel noted that this Court applied the
19 *79 Madison* case, and that's accurate. We think that's
20 precisely the point. That's the only case that the parties
21 have found on point, and it's not clear to us that the New York
22 Court of Appeals would follow the position adopted in *79*
23 *Madison*. Obviously, the question of whether to certify this
24 question to the New York Court of Appeals is a discretionary
25 one for the Second Circuit, but we think it fits the very

N5uW245C

1 factors.

2 And one last point.

3 THE COURT: I'm sorry. Why is that? There's no
4 conflicting decision by any of the four departments with 79
5 *Madison*.

6 MR. BRESSMAN: That's right, your Honor.

7 THE COURT: So --

8 MR. BRESSMAN: I'll point the Court to *Ortiz v. Ciox*
9 *Health, LLC*, 961 F.3d 155, which is a 2020 decision from the
10 Second Circuit. So in *Ortiz v. CIOX Health, LLC*, the Second
11 Circuit laid out the test of when it will certify a question to
12 the Court of Appeals, and it listed four factors.

13 The first is whether the Court of Appeals has squarely
14 addressed the issue and whether there are other decisions and
15 whether other New York court decisions are sufficient to
16 predict how the Court of Appeals would resolve it. So we would
17 contend, your Honor, that this is an area of law that a New
18 York Court of Appeals has not addressed and that the 79 *Madison*
19 case alone is not a sufficient indicator of how the Court of
20 Appeals would resolve it.

21 THE COURT: OK.

22 MR. BRESSMAN: And one last point, your Honor?

23 If the Court denied this stay, we would respectfully
24 request a brief interim stay, which would allow us to go to the
25 Second Circuit to seek a stay. This should have a *de minimis*

N5uW245C

1 impact on petitioner, and pointing to the Court some previous
2 decisions where your Honor has granted short stays, usually
3 around 14 days, to allow defendant to apply for a stay to the
4 Second Circuit.

5 THE COURT: OK.

6 Anything else that the petitioner wants to tell me?

7 I can tell you I am not inclined to grant a stay
8 pending appeal because I don't believe that the requirements
9 for a stay pending appeal have been met. I think there's been
10 no showing of irreparable injury, and frankly, respondent
11 admitted as much in the course of this argument -- that the
12 assets of the LLC could be valued and compensable in money
13 damages.

14 I also don't believe, for all the reasons that I
15 previously stated in the opinion, that there's a likelihood of
16 success on the merits, and the public interest argues in favor
17 of the enforcement of judgments.

18 On the other hand, in deference to the Court of
19 Appeals, I always grant a brief stay to allow the parties to go
20 to the Court of Appeals to seek a stay pending appeal, because
21 I think that's the deference that's owed to the Court of
22 Appeals -- to allow the Court of Appeals to decide. And before
23 seeking a stay in the Court of Appeals, a party is required to
24 go to the district court first to seek a stay in the district
25 court.

N5uW245C

1 So I would be inclined to grant a brief stay to allow
2 the respondent to go to the Court of Appeals. The stay should
3 probably be about ten days.

4 Anything that the petitioner would like to tell me;
5 some reason why the brief stay to allow the Court of Appeals to
6 consider this is something that I should not do?

7 MR. RESSLER: Judge, we just think, again, the fact
8 that respondent waited so long since your Honor's opinion and
9 order is inappropriate. And now, literally on the eve of the
10 deadline that the Court set for respondent to come in,
11 requesting a stay, again, is improper and it should be denied.

12 THE COURT: Well --

13 MR. RESSLER: Respondent has slept on its rights until
14 the last possible moment, in our view, once again, because its
15 only strategy here is to delay, do everything it can to
16 frustrate our efforts to collect on the judgment.

17 THE COURT: Well, you haven't told me what the harm is
18 from an interim stay for the Court of Appeals to decide the
19 issue. I realize that the respondent inappropriately waited 11
20 days to seek the relief, but is there something you're going to
21 do in the next ten days that outweighs the deference that I owe
22 to the Court of Appeals and which the Court of Appeals has said
23 in at least one case I can recall -- not my case -- that they
24 found it inappropriate for the district court not to have given
25 the Court of Appeals the opportunity to rule on a stay? So

N5uW245C

1 what's going to happen over the next 10 or 11 days that I
2 shouldn't give deference to the Court of Appeals to make the
3 decision?

4 MR. RESSLER: Your Honor, we have no plans to do
5 anything over the next ten days that would be sidelined with
6 respect to the brief stay that your Honor has alluded to.
7 That, of course, we want to ensure that respondent doesn't do
8 anything with respect to the assets at issue, needless to say.

9 THE COURT: The respondent says I already have other
10 preliminary relief in place that would prevent them from doing
11 anything with the assets over that period of time.

12 Is that right, Mr. Bressman?

13 MR. BRESSMAN: That's correct, your Honor.

14 THE COURT: Woe betide if anything happens over the
15 next 10 or 11 days to make your representation incorrect.

16 MR. BRESSMAN: I will stress to my clients very
17 strongly, your Honor, and make sure that that doesn't happen.

18 THE COURT: It's not only your client's representation
19 now; it's your representation.

20 MR. BRESSMAN: Understood, your Honor.

21 THE COURT: OK.

22 MR. RESSLER: Your Honor, one additional point, so
23 that we can use the period during which this brief stay is
24 going to be in place wisely?

25 We have been requesting some basic information

N5uW245C

1 necessary to effectuate your Honor's May 19 order, and once
2 again, we've come up empty. Respondents refuse to engage with
3 us on this important information. We're putting together a
4 brief letter setting forth this dispute for your Honor, which
5 we will be filing this afternoon, and we're hopeful that, with
6 the Court's intervention, we'll be able to obtain this
7 information so, as I said, we can use the period during which
8 this brief stay's going to be in place to, again, further the
9 order so that we can obtain the asset that your Honor has
10 ordered be turned over.

11 THE COURT: You're welcome to write the letter.

12 Mr. Bressman, has your client been resisting the
13 production of information necessary to effectuate the order?

14 MR. BRESSMAN: I don't believe so, your Honor. I
15 think there's a difference between the parties as to what the
16 order requires. We've read the order as written to require
17 turnover of the assets, which, as I mentioned before, my client
18 intends to comply with.

19 We think that the additional information that they're
20 seeking with such -- I'm not sure this is the right time to get
21 into it, but it's beyond what the Court order requires and as
22 well as information that they'll be able to obtain as new
23 shareholder of HNA North America. But counsel can put in their
24 letter, and we'd just request an opportunity to respond.

25 THE COURT: Of course. Of course you'll have

N5uW245C

1 opportunity to respond. But you resist the categorization that
2 your client has been obstructing enforcement of the judgment,
3 and then when the other side asks for information in order to
4 be able to effectuate an order of the Court, you say, well,
5 that really goes beyond the four corners of the order, and the
6 Court is left to wonder whether you're cooperative in terms of
7 efforts to enforce the judgment or whether, in fact, the
8 respondent is resisting enforcement of the judgment. I leave
9 that to you.

10 Anything else for me?

11 I'll issue a brief opinion and order, which will deny
12 the stay pending appeal but allow an interim stay to allow the
13 Court of Appeals to rule on any application for the stay.

14 OK. Anything further for me?

15 No.

16 MR. RESSLER: Nothing from petitioner.

17 MR. BRESSMAN: Nothing from respondent, your Honor.

18 THE COURT: OK. Bye now.

19 (Adjourned)
20
21
22
23
24
25